

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYNN N. EALY,

Defendant.

Case No. 1:05-CR-58

Hon. Richard Alan Enslen

ORDER

Defendant Lynn N. Ealy has filed a Motion for Government to Produce Essential Discovery Documents. The “documents” he seeks are listed on pages “-8-” and “-9-” of the Motion.¹

At present, Defendant’s convictions on three counts of income tax evasion are upon appeal before the Sixth Circuit Court of Appeals; although the Sixth Circuit has denied the appeal itself, the Sixth Circuit is still considering Defendant’s rehearing petition. As such, the filing of a section 2255 motion would now be premature. *See, e.g., Jenkins v. United States*, 394 F.3d 407, 409 (6th Cir. 2005); *Dunlap v. United States*, 250 F.3d 1001, 1010 (6th Cir. 2001).

Similarly, the Motion for Government to Produce Essential Discovery Documents is likewise premature. The filing of a discovery motion pertaining to matters which may be asserted under 28 U.S.C. § 2255 must await the filing of the timely section 2255 motion. As such, this Motion will be denied as premature and as filed in advance of any supporting section 2255 motion. *See Calderon v. United States Dist. Court*, 98 F.3d 1102, 1106-07 (9th Cir. 1996); *United States v. Tamayo*, 2000

¹The reference to the page numbers is based upon Defendant’s enumeration of the pages. Since Defendant assigned page number “-1-” starting on the actual second page of his Motion, the request for documents are made at the actual ninth and tenth pages of the Motion. It is also noted that some of the documents Defendant seeks are not existing documents, but rather documents which Defendant wishes Plaintiff to create in response to his Motion.

WL 1871673, *1 (6th Cir. Dec. 11, 2000); *In re Federal Grand Jury*, 1992 WL 236867, *1 (6th Cir. Sept. 24, 1992).

THEREFORE, IT IS HEREBY ORDERED that Defendant Lynn N. Ealy's Motion for Government to Produce Essential Discovery Documents (Dkt. No. 91) is **DENIED WITHOUT PREJUDICE** to a later motion seeking proper discovery in connection with a pending section 2255 motion.

DATED in Kalamazoo, MI:
June 18, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE